UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MED-ASIA SHIPPING LIMITED

Plaintiff,

07 CIV 6258 (LTS) (AJP)

- against -

OCEANIC BRIDGE INTERNATIONAL, INC., d/b/a OCEANIC BRIDGE INTL, INC. DALIAN BRANCH, a/k/a DALIAN OCEANICBRIDGE INTERNATIONAL FORWARDING CO., LTD.,

Defendants.

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DEFENDANT OCEANIC BRIDGE INTERNATIONAL INC.'S
MEMORANDUM OF LAW IN SUPPORT OF CERTIFICATION

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Of Counsel:

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PRELIMINARY STATEMENT

Defendant Oceanic Bridge International Inc.("Ocean Bridge") respectfully submits this Memorandum of Law in support of its motion to certify the Court's October 12, 2007 Order (Docket No. 19) (the "Order") for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). As appears from the record at the October 12, 2007, hearing held pursuant to Rule E(4)(f) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure[1] ("Admiralty Rules") and from the legal briefs and Declarations filed in connection with the Defendant's Motion to Vacate (Docket No. 7), the legal questions raised therein involve a controlling question of law as to which there is substantial ground for difference of opinion. Specifically, the legal standard cited and relied upon by the Court in denying the Defendant's motion results in a clear denial of due process. The said standard permits a party's funds (or other property) to be seized and attached based on mere allegations — which, in turn, are made only "upon information and belief." Thus, the prompt hearing that due process requires is no hearing at all because the Court's decision is preordained with the filing of the Complaint and any evidentiary proffers from Defendant are wholly irrelevant. Defendant is effectively deprived of its "day in court."

FACTUAL BACKGROUND

This action arises out of the alleged breach of charter party agreements (or "Fixture Notes"). Having filed a Verified Complaint alleging a (wholly specious) alter ego relationship, Plaintiff moved ex parte for an order directing the Clerk to issue writs of Maritime Attachment and Garnishment ("maritime attachments"), which the Court granted (Docket No. 4). Plaintiff thereby successfully attached various electronic fund transfers, and Defendant then moved to

[1] A copy of the official transcript of that hearing is attached hereto as Exhibit A.

vacate the attachment relying, inter alia, upon sworn Declarations that no such alter ego relationship existed.

On October 12, 2007, at a Rule E(4)(f) hearing, this Court by the Honorable United States District Judge Laura Taylor Swain filed and entered an Order denying Defendant's motion to vacate. In denying the Defendant's motion, the Court stated: "But the requirement at this stage is satisfaction and articulation of the prima facie admiralty claim and the verified complaint is itself sufficient." That standard, when applied to monies attached on naked alter ego allegations amounts to a denial of due process.

LEGAL ARGUMENT

Oceanic Bridge submits that the Court's Order presents a controlling question of law that warrants immediate appeal. Accordingly, Oceanic Bridge requests that the Court certify its prior Order or amend its prior Order pursuant to Federal Civil Procedure Rule 60(b) to include a determination that the Order be immediately appealable pursuant to 28 U.S.C.§ 1292(b).

Section 1292(b) provides that

> When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.

A court "may permit an interlocutory appeal if it finds that: (1) the order 'involves a controlling question of law,' (2) 'as to which there is substantial ground for difference of opinion,' and that (3) 'appeal from the order may materially advance the ultimate termination of the litigation.'" Klein v. Vision Lab Telecomm., Inc., 399 F. Supp. 2d 528, 536 (S.D.N.Y. 2005 (quoting 28 U.S.C. § 1292(b)).

The resolution of an issue need not necessarily terminate an action in order to be "controlling" for purposes of certification. See Klinghoffer v. S.N.C. Achille Lauro, 921 F.2d 21, 24 (2d Cir. 1990); see also 19 James W. Moore, Moore's Federal Practice § 203.31[3] (3d ed. 2000) ("Even though a controlling question need not dispose of, but only advance the ultimate termination of, the litigation, it must nevertheless present a clear-cut question of law against a background of established facts."). The Second Circuit has held that controlling issues of law include determinations that "are likely to have precedential value for a large number of other suits . . . pending in the Southern District." Brown v. Bullock, 294 F.2d 415, 417 (2d Cir. 1961); see also Aurora Maritime Co. v. Abdullah Mohamed Fahem & Co., 890 F. Supp. 322, 329 (S.D.N.Y. 1995). "[I]n regard to the second prong, the substantial ground for a difference of opinion within the meaning of § 1292(b) must arise out of a genuine doubt as to the correct applicable legal standard that was relied on in the order." In re Worldcom, Inc., No. M-47 HB, 2003 WL 21498904, at *10-11 (S.D.N.Y. June 30, 2003) (internal quotation marks omitted). "The decision whether to grant an interlocutory appeal from a district court order lies within the district court's discretion." Consub Delaware LLC v. Schahin Engenharia Limitada, 476 F. Supp. 2d 305, 309 (S.D.N.Y. 2007).

Defendant seeks certification on the discrete issue of whether the Court's application of the prima facie standard to Plaintiff's alter ego allegations was a denial of due process. The Court used this standard to uphold the Plaintiff's maritime attachment, which had the effect of rendering the Rule E(4)(f) post-seizure hearing hollow. The Admiralty Rule E(4)(f) hearing requirement provides: "Whenever property is arrested or attached, any person claiming an interest in it shall be entitled to a prompt hearing at which the plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with these

rules." Id. (emphasis added). The requirement for a "prompt hearing" was added to Rule E(4)(f) in 1985 to address any possible due process concerns. See Winter Storm Shipping, Ltd. v. TPI, 310 F.3d 263, 271-72 (2d Cir. 2002) (discussing historical development of maritime attachments and due process concerns). The Advisory Committee notes for the Rule explains:

> Rule E(4)(f) makes available the type of prompt post-seizure hearing in proceedings under Supplemental Rules B and C that the Supreme Court has called for in a number of cases arising in other contexts. See North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975); Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974). Although post-attachment and post-arrest hearings always have been available on motion, an explicit statement emphasizing promptness and elaborating the procedure has been lacking in the Supplemental Rules. Rule E(4)(f) is designed to satisfy the constitutional requirement of due process by guaranteeing to the shipowner a prompt post-seizure hearing at which he can attack the complaint, the arrest, the security demanded, or any other alleged deficiency in the proceedings.

Fed. R. Civ. P. Supp. R. E advisory committee's note (1985).

The sole authority relied upon by the Court in applying the prima facie standard to the Plaintiff's alter ego allegations was Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd., 460 F.3d 434, 436 (2d Cir. 2006). The Second Circuit in Aqua Stoli set forth the circumstances in which a maritime attachment could be vacated, but it did not set forth the burden of proof required at the hearing to uphold or vacate an attachment. See SPL Shipping Ltd. v. Gujarat Cheminex Ltd., No. 06-CV-15375, 2007 WL 831810, at *3 (S.D.N.Y. Mar. 15, 2007):

> The question presented here is: what does Plaintiff have to show in order to meet the requirements of Rule B? That question, however, was not directly before the Aqua Stoli court. . . . Subsequently, lower courts in this District have taken the Aqua Stoli holding to mean that a plaintiff's burden at a Rule E(4)(f) hearing is to show only that it has a valid prima facie maritime claim against the defendant." (internal citations omitted).

Further, Aqua Stoli did not involve, let alone decide the burden a plaintiff bears at the Rule E(4)(f) hearing with respect to allegations that a defendant is an alter ego of another party.

Before Aqua Stoli, Judge Scheindlin had articulated the difference between the burden of proof required to obtain the attachment and the burden of proof at the "prompt hearing" required by due process. In Ullises Shipping Corp. v. FAL Shipping Co., 415 F. Supp. 2d 318, 325 (S.D.N.Y. 2006), overruled on other grounds by Aqua Stoli Shipping Ltd., 460 F.3d 434, Judge Scheindlin explained: "But although a minimal prima facie showing is sufficient to justify an attachment under Rule B, under Rule E(4)(f), [plaintiff] has the burden of presenting some evidence showing reasonable grounds for the attachment." Id. (emphasis added). Accord Wajilam Exports (Singapore) Pte. Ltd. v. ATL Shipping Ltd., 475 F. Supp. 2d 275, 278 (S.D.N.Y. 2006) (stating Aqua Stoli did not discuss whether "its holding had any impact on the 'reasonable grounds' inquiry as it relates to the 'valid prima facie claim' analysis"). The decision in Ullises is particularly instructive because, as here, it involved attachments based on alter ego theories, which Judge Scheindlin assessed using the reasonable grounds standard. See Ullises Shipping Corp., 415 F. Supp. 2d at 325-26. The court found that the plaintiff had presented sufficient evidence to uphold the attachment against only some of the defendants on an alter ego theory; reasonable grounds did not exist as against all defendants. See id.

Significantly, Aqua Stoli did nothing to change the distinct burdens of proof borne by the plaintiff, first to obtain the attachment and, second, to uphold the attachment at the hearing. Rather, Aqua Stoli set forth the conditions (but did not define the burden of proof) in which vacatur of a maritime attachment was proper:

> [O]nce a plaintiff has carried his burden to show that his attachment satisfies the requirements of Supplemental Rule B, a district court may vacate an attachment only upon circumstances not present in this case. Circumstances that may justify a vacatur

> can occur where 1) the defendant is present in a convenient adjacent jurisdiction; 2) the defendant is present in the district where the plaintiff is located; or 3) the plaintiff has already obtained sufficient security for a judgment.

Aqua Stoli Shipping Ltd., 460 F.3d at 436. In determining when to vacate an attachment, the Court of Appeals in Aqua Stoli also established the burden of proof required to obtain the attachment in the first instance (but again not at the Rule E(4)(f) hearing). In discussing the requirements for a valid Rule B maritime attachment, the court stated that attachment should issue if "the plaintiff shows that 1) it has a valid prima facie admiralty claim against the defendant; 2) the defendant cannot be found within the district; 3) the defendant's property may be found within the district; and 4) there is no statutory or maritime law bar to the attachment." Aqua Stoli Shipping Ltd., 460 F.3d at 445. The court then stated the truism that if the plaintiff failed to meet its burden then it had failed to satisfy the requirements of Rule B and E. See id. ("Conversely, a district court must vacate an attachment if the plaintiff fails to sustain his burden of showing that he has satisfied the requirements of Rules B and E.").

Respectfully, courts within this district have misconstrued the holding of Aqua Stoli and have (mistakenly Defendant submits) upheld attachments based upon a "prima facie" showing by the plaintiff at the Rule E(4)(f) hearing. See, e.g., Dolco Inv., Ltd. v. Moonriver Dev., Ltd., 486 F. Supp. 2d 261, 266-69 (S.D.N.Y. 2007). However, not all district court cases are in accord and even individual judges have been inconsistent. See Wajilam Exports (Singapore) Pte. Ltd., 475 F. Supp. 2d at 278 ("The standard generally applied in a Rule E(4)(f) analysis is that the plaintiff must demonstrate that 'reasonable grounds' exist for the attachment."). For instance, Judge McMahon surveyed the decisions in the district and concluded that the "weight of authority" is to apply the prima facie standard when considering the adequacy of a claim in a maritime vacatur motion. See Wilhelmsen Premier Marine Fuels AS v. UBS Provedores Pty

Ltd., No. 07-CV-5798, 2007 WL 2872477, at *9 (S.D.N.Y. Oct. 1, 2007). However, less than a month earlier Judge McMahon vacated an attachment on the grounds that "a Rule B attachment on an alleged alter ego's property cannot be sustained in the absence of a showing of at least some specific facts demonstrating the type of corporate domination and control sufficient to pierce the corporate veil." Brave Bulk Transport Ltd. v. Spot on Shipping, Ltd., No. 07-CV-4546, 2007 WL 2734291, at *1 (S.D.N.Y. Sept. 17, 2007) (emphasis added).

Defendant submits that Judge Scheindlin's "reasonable grounds" standard is the correct burden of proof required at any Rule E(4) hearing. Alternatively, applying the prima facie standard leads to the unconstitutional taking of property and denial of a fair hearing because the defendant's evidence is not even considered by the court. See, e.g., Wilhelmsen Premier Marine Fuels AS, 2007 WL 2872477, at *9 ("Under this standard, the Court looks only to the Complaint to determine whether the plaintiff has alleged a valid admiralty claim against the defendant."); SPL Shipping Ltd., 2007 WL 831810, at *3 ("[T]he Court will determine the sufficiency of Plaintiff's Verified Complaint under the prima facie test, rather than the reasonable grounds test."). By examining only the "upon information and belief" averments of the Complaint, Defendant's contravening evidentiary proffers are rendered wholly meaningless particularly so with respect to the "upon information and belief" alter ego allegations. Because the arguments and evidence presented at the hearing would never be considered in determining whether to uphold the attachment, the hearing was tantamount to no hearing at all and was therefore a deprivation of due process.

As in Consub Delaware LLC, certification of the Court's Order is warranted in this case because all three elements of section 1292(b) are met. First, the issue — whether the Court

applied the proper standard to assess Plaintiff's alter ego allegations in upholding the maritime attachment — is a purely legal question that does not require any reference to the factual record.

Second, as discussed above there is substantial ground for a differences of opinion regarding whether the mere complaint is sufficient to uphold a maritime attachment against an alleged alter ego. For example, within the past two months there have been conflicting decisions from courts in this district. Compare Brave Bulk Transp. Ltd., 2007 WL 2734291, at *1 (requiring "at least some specific facts demonstrating the type of corporate domination and control sufficient to pierce the corporate veil") with Wilhelmsen Premier Marine Fuels AS, 2007 WL 2872477, at *9 (stating the weight of authority in this district is to apply the prima facie standard and applying same).

Third, an immediate appeal from the Order should materially advance the ultimate termination of the litigation. If Defendant prevails on the appeal, the Rule B attachment will be vacated and will result in a termination of the litigation, as the Court will lack in personam jurisdiction over defendant. See, e.g., Consub Delaware LLC, 476 F. Supp. 2d at 313-14; Seamar Shipping Corp. v. Kremikovtzi Trade Ltd., 461 F. Supp. 2d 222, 226 (S.D.N.Y. 2006) (concluding that certification of order granting motion to vacate would materially advance the ultimate termination of the litigation). Consequently, the Court's Order should be certified for immediate appeal, and defendant so prays.

CONCLUSION

Based upon the foregoing reasons, Defendant Oceanic Bridge International Inc. respectfully requests that the Court exercise its discretion and certify its Order, dated October 12, 2007, for immediate appeal pursuant to 28 U.S.C § 1292.

Dated: New York, New York
November 19, 2007

Respectively submitted,

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OCEANIC BRIDGE INTERNATIONAL INC.

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Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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MED-ASIA SHIPPING LIMITED,

Plaintiff,

v. 07 Civ. 6258 (LTS)

OCEANIC BRIDGE INTERNATIONAL, INC., d/b/a Oceanic Bridge Int'l Inc. Dalian branch, a/k/a Dalian Oceanicbridge International Forwarding Co., Ltd.,

Defendant.

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New York, N.Y.
October 12, 2007
3:30 p.m.

Before:

HON. LAURA TAYLOR SWAIN,

District Judge

APPEARANCES

RICHARD A. ZIMMERMAN
Attorney for Plaintiff
BY: PATRICK C. CRILLEY

NICOLETTI HORNIG & SWEENEY
Attorneys for Defendant
BY: JAMES F. SWEENEY
WILLIAM M. FENNELL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MED-ASIA SHIPPING LIMITED,

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RICHARD A. ZIMMERMAN
Attorney for Plaintiff
BY: PATRICK C. CRILLEY

NICOLETTI HORNIG & SWEENEY
Attorneys for Defendant
BY: JAMES F. SWEENEY
WILLIAM M. FENNELL

(Case called)

THE COURT: I have been handed up some surreply papers on behalf of plaintiffs. As the cover letter notes, I do not normally entertain surreply papers. I did not authorize surreply papers and I'm not going to consider the surreply papers.

MR. CRILLEY: Your Honor, if I could comment on that, if you allow me. This is a supplemental Rule E(4) hearing as well as a motion to dismiss hearing. The plaintiff has the burden of proving his attachment is reasonable. In the defendant's reply papers the defendant's witness says: I am from Dalian Oceanicbridge International Forwarding Company, Limited, denying that she represents the California company, Ocean Bridge International Transportation, Inc., I believe is the name of the California company.

The papers I've submitted this morning, Exhibits H and Exhibits I, specifically are copies of correspondence from that witness, Ma Lijun, signed again and again, Ma Lijun Oceanic Bridge Transportation, Inc., a California company. She claims she didn't have a card, yet her correspondence numerous correspondence are -- that are produced in Exhibit H go to the heart of the matter she has raised in her reply papers.

THE COURT: You've made your record as to your offer of proof.

In addition to addressing the Rule E(4)(f) issues

today I will also address and in fact I'll first address the defendant's pending motion to dismiss the complaint. And my ruling on that motion to dismiss, pursuant to Rule 12(b)(6), is as follows:

The motion is denied. The motion relies on the proffer of declarations and other matters outside of the complaint intended to controvert the factual premises of the complaint. However, on a motion to dismiss pursuant to Rule 12(b)(6), the Court must take the allegations of the complaint as true and does not look beyond the pleadings.

Here, the verified complaint contains detailed allegations concerning actions of Dalian Oceanic Bridge and the alleged connections and relationship between Oceanic Bridge International and Dalian Oceanicbridge. It may well be that at later stages of these proceedings the defendant may successfully controvert these allegations, but a 12(b)(6) motion is not the appropriate procedural vehicle for seeking to do so.

Therefore, the Court finds, having reviewed the complaint, that it is sufficient to state the cause of action asserted therein as against both Oceanic Bridge and Dalian Oceanic Bridge, and the motion to dismiss the complaint pursuant to Rule 12(b)(6) is therefore denied.

The aspect of the motion that seeks dismissal pursuant to Rule 12(b)(2) relating to personal jurisdiction is also

denied. The attachment procedure exists in order to support the exercise of quasi in rem jurisdiction. Oceanic Bridge International has assets in the district which had at this point been attached. We will deal with the attachment issue shortly. But there is, on the basis of that attachment, quasi in rem jurisdiction and the motion to dismiss premised on the lack of the presence by the defendant in the district is denied.

Did counsel want to be heard on the legal issues relating to the Rule E(4)(f) attachment question?

MR. SWEENEY: Yes, your Honor, please.

THE COURT: That is Mr. Sweeney?

MR. SWEENEY: Yes.

THE COURT: Let me just ask the deputy, Ms. Ng, do you have the cards?

THE DEPUTY CLERK: Yes.

THE COURT: The deputy is the time keeper. You have ten minutes. You want to reserve anything for rebuttal?

MR. SWEENEY: I would like to split that seven and three.

THE COURT: Very well then.

MR. SWEENEY: Your Honor, as demonstrated in the declarations that we did submit on this motion and in the reply declarations, defendant Oceanic Bridge International is not the alterego of Dalian Oceanbridge International Forwarding Co.

If I might, just because of the names are so similar, if I could refer to them as OB for Oceanic Bridge, with the Court's permission, as we have done in moving papers, and Dalian, just sot that we can try and keep them straight. Otherwise, the names, being similar, tend to overlap and it's confusing.

THE COURT: That's fine. You can certainly do that.

What I would like you to address before going into the factual proffers -- and I have read the papers very carefully. I've seen the business cards and read the e-mails and looked at the company names on the e-mails. Why is it that I should be looking at the credibility or sustainability of the factual allegations at all at this stage? It seems to me that the case law is very strongly focused on the question of whether the verified complaint or the verified complaint plus any additional evidence proffered by the plaintiff is sufficient to sustain a prima facie case, prima facie admiralty claim against the entity whose assets have been attached. And in Judge Wood's opinion following on Aqua Stoli, it certainly makes very explicit the point that fact finding is not the exercise at this stage. So why is it that I should be weighing evidence and making factual calls at this point?

MR. SWEENEY: Because, your Honor, if we take a look at their complaint and then we take a look at the declarations submitted by the plaintiffs, they contradict each other. In

other words, the complaint is made on information and belief. Then when we get to, let's say, hard evidence submitted by this plaintiff, it goes the exact opposite way.

For instance, take a look at paragraphs 10 and 11 of the complaint, which allege that Oceanic Bridge Dalian uses Ocean Bridge to hold the assets of and make payments for and on behalf of Oceanic Bridge Dalian. We get to the declaration of Mr. Frankie Tang submitted by the plaintiffs here, particularly paragraph 17. What we find out is that they are alleging just the opposite, that one company isn't paying for the other. In other words, A isn't paying for B, but B is paying for A. When you start to scratch the information and belief allegations, they fall apart under the hard evidence that they are now submitting.

That's also true of paragraph 8. At all material times defendant Oceanic Bridge was a wholly-owned dedicated office on information and belief. Now, we find out, according to their papers, that they knew that it was just an investor. Same thing for paragraph No. 9. And these are the alterego allegations that I'm driving at, your Honor, acted as partners and/or joint venturers. There is not a shred of evidence that they have come forward with to support any of that. That was on information and belief. When pressed, when put to this motion, there is nothing there. So the complaint falls apart of its own weight. There is nothing behind it, your Honor, to

support this.

What this all stemmed from was an error made on the part of the plaintiffs. Two companies got together. There was OB, there was Dalian. They were dealing with Dalian. OB was an investor. They told them that. What happens then is that the plaintiffs insert a bastardized name, I'll call it, a company that doesn't exist, into the first contract between the parties, charter parties. They either refused or failed to correct that, although it was brought to their attention.

THE COURT: In e-mails that had the signatory's name over that same bastardized name?

MR. SWEENEY: No, your Honor. The name that we are talking about was Oceanic Bridge International, Inc., Dalian branch. That is a nonexistent entity.

MR. CRILLEY: Your Honor, I think you would be looking for Exhibit B to Mr. Lin's reply affidavit. If the second page produced by the movants is correct, signed best regards, Edward, Oceanic Bridge International, Inc., Dalian branch, he left out the bastardized part of that.

THE COURT: I know that I have seen that on, I believe, one e-mail, the reply.

MR. CRILLEY: Exhibit 4, Exhibit B, second page.

THE COURT: Thank you. That's what I was looking for. At the end of Exhibit B to the declaration of Edward Lin, which declaration is dated October 3, 2007, the last page, second

page of that e-mail which begins: Please correct charter's name, and it says: Oceanic Bridge International, Inc., Dalian branch is not exist. At the very end it says: Best regards, Edward, and then it says: Oceanic Bridge International, Inc., Dalian branch.

MR. SWEENEY: Correct, your Honor. But the top e-mail in the chain is the later e-mail here and it's a correction. And the correction is being pointed out to the plaintiffs. Again, plaintiffs either refuse, refused, or failed to heed that correction. They perpetuated it in the charter party. That brings us to these proceedings today. From there the plaintiffs proceeded to go and attach the proceeds or the funds of the U.S. corporation, which had none of these dealings at all here in this contractual arrangement.

So with that, with the allegations that don't hold any water in the complaint, with the mistaken perpetuation of this name that doesn't exist or entity that doesn't exist, I should say, your Honor, we are brought here today on an attachment of a company that had nothing to do with this. And then as we see in the complaint, the allegations of alterego don't hold water either.

I would like to reserve the rest of my time, your Honor, for rebuttal. Thank you, Mr. Sweeney. Mr. Crilley.

MR. CRILLEY: Your Honor, the correspondence and the exhibits to the Frankie affidavit and the Jan affidavit show

that it was Dalian or the defendants who repeatedly introduced the name Ocean Bridge International, Inc., Dalian branch. It's not something that the plaintiffs came up with.

The plaintiffs at the time of fixing said, who are you? Who is this company? We don't know who you are. In reply to that they get the corporate documents of OB, the California company, presented to them. Plaintiffs never asked who were your investors. People don't ask that, your Honor. People ask, who are you? What's your company? And again California documents said, we are a California company. They sign it with the California company's name, with an additional Dalian branch. They admit there is no such corporation, yet they continue to use it throughout their correspondence.

What does that mean, Dalian branch? We are not sure. But when I go to the Citibank branch in Wantagh, that's the Wantagh branch of Citibank. I go there, I think I'm dealing with Citibank. If I go to the Citibank branch in Connecticut, I think I'm dealing with Citibank. If somebody sends me their corporate documents, when I say, who are you, and they reply, this is who I am, here is my documents, and our head office is in Los Angeles, I think that's who I am dealing with, your Honor.

As far as other points raised in the reply briefs saying that, oh, they don't share brick and mortar space, this is the 21st century, your Honor. Companies, many don't share

brick and mortar space, but they market themselves and they hold themselves out to the world as being a formidable company. The fact that we all share the same e-mail domain, that means nothing. That's like everybody on Yahoo suddenly shares. I tried this morning, your Honor, to get myself a Yahoo e-mail address. I could do it in about five minutes. It's a public domain. I tried to get myself an Oceanic Bridge e-mail address. I didn't know how to do that. That's not a public domain. That's a private domain.

They hold themselves out to the public as one big happy family and you're dealing with them. You can deal with them, any branch you want, at your convenience, but we are international Oceanic -- Ocean Bridge International Transportation Company. That's the way they hold themselves out to the world. That's why the attachment here is correct, your Honor.

THE COURT: Thank you.

Mr. Sweeney, anything further?

MR. SWEENEY: Let's just stay with Citibank for a minute. I'm sure Citibank has a lot of subsidiaries. And even though they may have one website, I'm sure all of those subsidiaries exist as separate corporations and are entitled, unless otherwise found perpetrating a fraud, something like that, to the respective separate corporate distinctions. The same applies here.

If you look at the web page, your Honor, there is one web address and all the companies are listed. But they are listed separately and they are incorporated separately and they are listed as separate corporations and they all have separate addresses, separate telephone numbers, and separate fax numbers. That's what the law is. We can't take that law, written rules from the Second Circuit, and just transpose that into some cyberspace rule now because we are all on the internet.

As far as what Med-Asia thought, it doesn't turn on what Med-Asia thought. It turns on whether or not there is actual corporate domination and control as measured by the ten factors which are cited both in plaintiff's papers, in our papers, and in the Second Circuit's decision, and we have addressed all of those in detail, your Honor. And plaintiff, who has the burden of proof here, really hasn't met any of those factors say for there is one common officer, one common director, and there is 40 percent ownership of Dalian by OB.

Under the case law, under the authorities, that's not enough. That doesn't get them anywhere near an alterego which requires commingled funds, intermingled properties, disrespected corporate formalities and so on. None of that has been shown in any of the papers, hasn't been shown here, and I haven't heard it here today, your Honor. Respectfully, we ask that the Court dissolve the attachment and rule in our favor.

Thank you, your Honor.

MR. CRILLEY: Your Honor, am I permitted a rebuttal?

THE COURT: No. Thank you.

I thoroughly considered the contents of your papers in principal opposition and reply papers and everything that I have heard here today. The question on an application to vacate the attachment is whether the plaintiff can prove it has met the requirements of Rule B of the supplemental admiralty rules, not whether the plaintiff can prove its underlying case by way of outweighing contrary evidence or indeed even by presenting at this stage of the litigation a fully developed evidentiary record sufficient to prove each and every element of the underlying claims.

The Second Circuit's Aqua Stoli opinion, which is reported at 460 F.3d, 434, 2006 opinion, makes it clear that the requirements for satisfaction of Rule B in addition to the basic filing and service requirements are a demonstration that the plaintiff has a valid prima facie admiralty claim against the defendant, that the defendant cannot be found within the district, that the defendant's property may be found within the district, and that there is no statutory or maritime law bar to the attachment, and this is the burden that must be sustained at the stage of the Rule E(4)(f) challenge.

The Court has reviewed carefully the verified complaint here and finds that the complaint contains

sufficiently detailed allegations to meet the requirements of Rule B, including the requirement that there be a showing of a valid prima facie claim as against the defendant seeking vacatur of the attachment. The plaintiff has alleged facts supporting liability of OB in connection with its claims against the Dalian entity by reason of alleged control and/or partnership or joint venture status. It may well be that the plaintiff is ultimately unable to sustain those claims as a matter of proof when the underlying issues of liability are ultimately litigated.

But the requirement at this stage is satisfaction and articulation of the prima facie admiralty claim and the verified complaint is itself sufficient.

The plaintiff has also proffered additional evidence that if taken as true would further corroborate the relational allegations or at least aspects of the relational allegations that are made in the complaint. Therefore, the motion to vacate the attachment is denied.

I had adjourned the initial pretrial conference so that we could focus on the motion practice today and so what I would propose to do is to put the initial pretrial conference on for November 2 at 10 in the morning, and that should give you sufficient time to confer and prepare the joint statement and file that a week in advance of the conference, if you are all available on the 2nd of November.

MR. SWEENEY: What day of the week is that, your Honor?

THE COURT: I believe that is a Friday, Friday at 10 in the morning. Are you all available then?

MR. SWEENEY: Yes, defendant is.

MR. CRILLEY: I believe I am available that day as well, your Honor.

THE COURT: So am I. So that should work out.

MR. CRILLEY: A question I had, your Honor, is the complaint states that the underlying claims, the parties have agreed to arbitrate them in Hong Kong. Many of the judges in this district are willing to put the matter on a suspense calendar to let the arbitration proceedings go forward rather than to tie up their docket here in New York where we are basically -- I invite Mr. Sweeney to correct me if I'm wrong -- we are going to come in and tell you that we are continuing to serve the writ of attachment in search of further security and the matter will be moving forward in arbitration in Hong Kong. It's not contemplated at this time that the merits are going to be heard in this court.

THE COURT: Well, frankly, when that is the situation I normally receive a joint request from the parties that the matter be maintained on the suspense calendar here. And if that is your joint view today, I can enter an order to that effect and we don't have to come back for the conference. If

you now or after further discussions have different views as to whether there is anything that should appropriately go forward here, you'll need to identify that controversy and the doctrinal basis for it and we will look at it together when we come back for the initial pretrial conference.

MR. SWEENEY: I understand your rulings today completely but I still firmly believe that we don't have an alterego situation here and I just want to explore the possibility of how I bring that to a head here so that we can get the one defendant out of this. And I don't know that I can, but at least I'd like, before agreeing, just to a joint placing of this matter on the suspense calendar, let me see if I can figure out something.

MR. CRILLEY: Your Honor, at the end of my brief opposition brief I requested to amend the complaint as well. As no one has appeared yet to file an answer to the complaint, I would wonder if I would have the Court's permission to amend the complaint, which would be probably changing one name in the complaint, one paragraph of the complaint.

THE COURT: I didn't address the motion to amend because you phrased it in the alternative and I denied the motion to dismiss. But as you point out, since there is no answer at this point, you're still an amendment as of right. I think you are, aren't you?

MR. CRILLEY: I am not sure if the rule says an answer

or an appearance. There has been an appearance, but it has been a limited appearance by its own nature and just for this particular hearing in this particular issue. If Mr. Sweeney doesn't have an objection to my amending the complaint, I don't think we have to get into whether or not it's of right or not of right.

THE COURT: Mr. Sweeney.

MR. SWEENEY: I'd like to see the proposed amended complaint before answering, your Honor. I don't know what the amendment is going to entail.

MR. CRILLEY: I can tell you in open court the amendment is going to entail in the first course of action saying that the charter party for the Eleni K was fixed directly with Ocean Bridge International, Inc. rather than with Ocean Bridge International, Inc. Dalian branch, which is the way the complaint reads now and which we all know now is a company that doesn't exist.

THE COURT: That's his proposed amendment. Again, I'll tell you my mind-set here, it's not a question of whether you can ultimately prove that. It's a question of whether he is going to be permitted to allege that.

MR. SWEENEY: I understand that, your Honor, and I understand under Rule 15 amendments are freely granted. With that, I wouldn't have any objection.

THE COURT: Very well then. You can file that by

when?

MR. CRILLEY: How about Monday at 5:00?

THE COURT: I'll give you until Friday.

MR. CRILLEY: This way I can sleep this weekend and watch the Cowboys.

THE COURT: The plaintiffs will file and serve an amended complaint by October 19, 2007. If it turns out to be wildly different than what was described here on the record, we will deal with that.

MR. SWEENEY: I'll let you know, your Honor.

THE COURT: From this conversation I don't expect it will be.

I will enter a brief order just reflecting that for the reasons stated on the record, the motion to dismiss is denied and the motion to vacate the attachment is denied and you'll get that through ECF.

Thank you all very much. Thank you for your arguments.

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